ATOFINA

ATOFINA Chemicals, Inc.

Via Hand Delivery

June 14, 2002

Hylebos NRDA Settlement Proposal Comments
Attn: Ms. Gail Siani
NOAA Damage Assessment and Restoration Center NW
7600 Sand Point Way NE
Seattle, WA 98115-0070

Re: Hylebos Waterway Natural Resource Damage Settlement Proposal Report

Dear Ms. Siani:

ATOFINA Chemicals, Inc. is pleased to submit the following comments in response to the request for public review and comment on the March 2002 draft Settlement Proposal Report by the Commencement Bay Natural Resource Trustees ("Trustees"). ATOFINA Chemicals has been a leader in the efforts to remediate the Hylebos Waterway through its membership in the Head of the Hylebos Cleanup Committee, and looks forward to working with the Trustees to resolve claims for natural resource damages.

ATOFINA Chemicals has conducted an in-depth review of the allocation procedure and has found it to be technically sound. The allocation goals are appropriate and are reasonably reflected in the final result. Based on our review of public records, sufficient information has been included in the allocation analysis to support the findings. In addition, the analysis appropriately identifies uncertainties where there is inadequate information to reach conclusions as to an equitable allocation.

Our comments below address three issues: (1) the Trustees' request for any additional information relating to unallocated natural resource damages near the ATOFINA Chemicals facility; (2) the results of our technical review of the Trustees' allocation analysis; and (3) ATOFINA Chemicals' response to the anticipated allegations by Kaiser Aluminum that their allocation share should be reallocated to others based on a private remedial allocation conducted by several parties.

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1. Unallocated dSAYS near ATOFINA Chemicals

We agree with statements in Appendix H that there must be clear evidence of a pathway to the Waterway prior to triggering a site for allocation. In particular, ATOFINA Chemicals agrees with the Trustees' conclusion in Appendix H that there is insufficient justification to allocate TCB and HCB Type I unresolved footprints in the Hylebos Waterway to the ATOFINA Chemicals (formerly "Elf Atochem") parcel. In addition, based on our own analysis of the available information, we agree that there is no linkage of contaminants in adjacent Type II unresolved footprints to the former Elf Atochem facility.

There is no historical evidence of a release from the former facility of TCB or HCB found in the Type I unresolved footprints, nor a gradient in concentrations in the Hylebos Waterway suggesting an association of those unresolved footprints with the former facility. Although some Type II unresolved footprints are proximate to the former facility, the substances in those footprints were not used, produced, or otherwise handled at the facility and are not present in the onsite soil or groundwater.

2. Summary of ATOFINA Chemical's Technical Review

ATOFINA Chemicals concurs with the Trustees' observation on page 35 of Appendix H that redistribution of Substances of Concern ("SOC") may occur as a result of a variety of Waterway activities. Our assessment of circulation patterns in the Upper Hylebos supports the Trustees' assumption that some contamination may migrate from one segment to an adjacent segment and that discharges entering at the boundary between Segment 1 and 2 contribute significantly to both segments. The distribution factors in Table 3-2 of Appendix H and supporting regression analysis in Appendix 5 are approximations that reasonably capture the effects of recirculation for the purpose of allocation.

Although the Trustees rely on quantitative chemical data from the 1990s for the allocation, the "broad brush approach" and historical perspective applied in Appendix H are appropriate and sufficient to identify distributions of widely dispersed SOC, such as high molecular weight PAH from the Kaiser Ditch. The original Remedial Investigation ("RI") analysis of contaminant distributions cited by the Trustees is reasonable, especially because the surface and subsurface sediment conditions documented during the RI were from a time period during which many releases were still ongoing or only recently controlled. Some potential sources, such as the Kaiser Ditch, were more clearly evident in that time period than in subsequent sampling in the mid-1990s.

The mass loading approach used in the allocation is appropriate for substances such as PCBs and PAHs that do not have discreet footprints in the Waterway. The similar treatment given these two chemical groups by the Trustees is more valid than that proposed in the TLI allocation. In addition, ATOFINA Chemicals believes that uncertainties in absolute mass loading estimates for these and other chemicals make the Trustees' use of relative indices essential. The proposed relative indices are reasonable

and the overall method properly emphasizes documented site releases for SOCs as well as fate and transport characteristics for significant chemicals that may have been released at some distance from the Waterway.

3. Comparison of Trustees Allocation to Private Party Allocation

The private party allocation conducted by TLI Systems failed to consider numerous technical issues that are appropriately addressed in the Trustees' analysis. As to Kaiser Aluminum, the TLI Systems' analysis suffered from numerous inadequacies noted by the United States Environmental Protection Agency ("EPA") including:

(1) Kaiser operated an aluminum smelting plant for over 40 years;

(2) Kaiser's operations and manufacturing process generated numerous, large quantity waste streams;

(3) high and low weight polyaromatic hydrocarbons were contained in Kaiser's manufacturing waste streams and were released by multiple pathways, e.g., Outfalls 1 and 2, Kaiser Ditch, particulate emissions, etc.;

(4) large scope cleanup actions were conducted on Kaiser's plant property and in the Kaiser Ditch primarily to address PAH-laden scrubber sludge;

(5) the significant volume of LPAH and HPAH-contaminated sediment in the Hylebos Waterway at surface and at subsurface affects the cost of the remedial action, and is in significant part attributable to Kaiser's releases;

(6) TLI System's approach infers that subsurface contamination can be fairly measured by surface SQO exceedances, which unfairly biases the allocation in Kaiser's favor;

(7) Subsurface data show SQO exceedances requiring a large sediment volume to be dredged is not reflected in Kaiser's allocated share;

(8) looking only to surface SQO exceedances without distinguishing large mass dischargers versus more minor dischargers resulted in a skewed result in favor of Kaiser to the disadvantage of more minor contributions;

(9) for large mass dischargers, such as Kaiser, TLI Systems did not account for more extensive fate and transport of released hazardous substances; and

(10) wood debris areas were added to the Superfund cleanup due to comingling of sediment contaminated with significant levels of other chemicals of concern, in particular, PAHs, which was not factored into Kaiser's allocated share.

See attached August 24, 2001 letter from EPA to R. Paul Beveridge. Based on these flaws, EPA expressed "serious concerns about how the methodology applied by TLI Systems resulted in a grossly inaccurate result for Kaiser." *Id.* ATOFINA Chemicals believes that the Trustee allocation, while still underestimating the full extent of Kaiser Aluminum's liability for releases of SOCs into the Waterway, defensibly addresses many of these issues.

ATOFINA Chemicals appreciates the considerable effort that the Trustees have made to develop an equitable settlement proposal. We look forward to the opportunity to negotiate a resolution to the Trustees' claims against ATOFINA Chemicals in the near future.

Sincerely,

Doug Loutzenhiser
Director, Remediation
ATOFINA Chemicals, Inc.

Enclosure

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cc: Stephen Parkinson